D.B. Civil Special Appeal No.554/1992

Municipal Council, Udaipur
Vs.
Praveen Singh Lodha & Anr.

Date of Order :: 25-05-2006

HON'BLE THE CHIEF JUSTICE SHRI S.N.JHA
HON'BLE SHRI JUSTICE DINESH MAHESHWARI

None present for the appellant.
Mr. Vijay Bishnoi, for the respondent.

This special appeal is directed against the order of the learned Single Judge dated 8.7.1992 in SBCWP No.1081/1982 disposing of the writ petition with a direction to the appellant, Municipal Council, Udaipur, to refund the amount collected by it as Octroi to the respondent.

The dispute relates to levy of Octroi on oil products. In Municipal Council, Jodhpur Vs. Parakh Automobiles (1980 WLN 107) a Division Bench of this Court held that oil products which are not used within the Municipal limits but are only transported through it, cannot be subjected to levy of Octroi by the Municipal Council. The decision was challenged in the Supreme Court but without success. Relying on the said decision, respondent No.1 filed the writ petition seeking direction upon the appellant not to realise Octroi on petrol, diesel, etc. supplied by the Indian Oil Corporation to him. The learned Single Judge relying on the decision in Parakh Automobiles upheld

the claim of the respondent and directed the appellant to refund the Octroi realised from him on furnishing security to the satisfaction of the Administrator or Commissioner, Municipal Board, Udaipur.

From perusal of the order of learned Single Judge it appears that the appellant resisted the claim for refund on the strength of amendment in the Rajasthan Municipalities Act, 1959 by the Rajasthan Municipalities (Second Amendment) Act, 1990 (Act No.13 of 1990). Section 6 of the Amendment Act contained a validation clause in terms of which assessment, re-assessment, levy or collection made under the provisions of Principal Act and the rules made thereunder "shall be deemed to be valid and effective" as if such assessment, re-assessment, levy or collection or action or thing had been made, taken or done under the Principal Act as amended by this Act and the rules and bye-laws made thereunder. We do not think that the validation clause can be availed of the appellant. The words of significance in Section 6 are "as amended by this Act." In other words, what was saved was some thing made, taken or done under the Principal Act "as amended by the Amendment Act." By amendment, Sections 23,24, 104(1)(2) and 133 of the Principal Act were amended. While Sections 23 and 24 are completely beside the point, in Section 104(1)(2) the following clause was substituted in place of the previous one - "An Octroi on goods and animals brought within the limits of the municipality for consumption

or use or sale therein". The ratio of Parakh Automobiles was that Octroi can be levied on products which are brought for being used within municipal limits. The amendment brought in Section 104(1)(2) prima facie was to be same effect. That being the position, the validation clause contained in Section 6 is little consequence in the instant case.

However, even though the appellant cannot derive any advantage from the said amendment, we are of the view that direction of the learned Single Judge to refund the amount collected by the appellant as Octroi to the respondent was not in accordance with law.

The question whether the particular transaction of import of oil products was for the purpose of use within municipal limits or simply transport through the municipal limit is a question of fact, and without verification of the records, no conclusion could be reached one way or other. Such a dispute cannot be decided on the basis of affidavits or pleadings.

The second aspect of the case is that the appellant had taken specific stand in the reply that the respondent had passed on the burden of levy to the consumers by charging additional amount from them and if the amount is to be refunded to the respondent by the Municipal Council, it would result in unjust enrichment. We find force in the stand of the appellant. We must hasten to observe that the

question whether the incidence of levy was passed on to the consumers is again a question of fact which can be decided only on verification of records and not on basis of pleadings and affidavits.

In the above premises, the direction of the learned Single Judge to refund the amount collected from the respondent as Octroi can not be sustained. That part of the order is accordingly set aside. As observed above, the controversy about the leviability of the Octroi and recoverability thereof involve questions of fact, the appropriate course is to direct the appellant to determine the liability of the respondent on the basis of records in the light of the observation made hereinabove. We direct accordingly.

As the demand relates to year 1976, it is appropriate that the determination is made at the earliest, preferably within six months of receipt of copy of this order subject to cooperation by the respondent.

This appeal is allowed in the above terms.

[DINESH MAHESHWARI],J. [S.N.JHA],CJ.

Praveen